

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

DEFED BANZI,  Petitioner,  vs.  BRENT FLUKE; RICHARD A. SOMMERS, Judge; CHRISTY SERR, Attorney-D.A.; and ATTORNEY GENERAL FOR THE STATE OF SOUTH DAKOTA,  Respondents.	4:21-CV-04207-KES  ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING PETITION
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Petitioner, Defed Banzi, filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to Magistrate Judge Veronica L. Duffy for a report and recommendation and she recommends dismissing the petition because Banzi failed to file the petition within the one-year statute of limitations period under the Antiterrorism and Effective Death Penalty Act (AEDPA) and because the claims are procedurally defaulted. Docket 13. Banzi did not object to the report and recommendation and the time for objections has passed. The court adopts Magistrate Judge Duffy's report and recommendation in full.

The court's review of a magistrate judge's report and recommendation is governed by 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil Procedure. Under 28 U.S.C. § 636(b)(1), the court reviews de novo any

objections to the magistrate judge's recommendations with respect to dispositive matters that are timely made and specific. *See* Fed. R. Civ. P. 72(b). ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to"). In conducting its de novo review, this court may then "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Craft*, 30 F.3d 1044, 1045 (8th Cir. 1994).

This court has reviewed Magistrate Judge Duffy's report and recommendation de novo. This court agrees in full with Magistrate Judge Duffy's reasoning and adopts the report and recommendation in full.

Furthermore, under Fed. R. App. P. 22(b), the court finds that Banzi has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Thus, a certificate of appealability is denied.

Thus, it is ORDERED that

1. The report and recommendation (Docket 13) is adopted in full. Banzi's pro se petition for habeas corpus is denied with prejudice
2. Respondents' motion to dismiss (Docket 11) is granted.
3. Banzi is denied a certificate of appealability.

Dated March 4, 2022.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE